BEFORE THE WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD

BRINNON GROUP and BRINNON MPR OPPOSITION,

Petitioners,

v.

JEFFERSON COUNTY,

Respondent,

And

PLEASANT HARBOR,

Intervenor.

Case No. 08-2-0014

FINAL DECISION AND ORDER

I. SYNOPSIS OF DECISION

In this Order the Board finds that the process employed by Jefferson County to adopt a comprehensive plan amendment authorizing a proposed Master Planned Resort map, legal description and text amendment for the Brinnon Master Planned Resort complied with the Growth Management Act's public participation requirements, as well as the process required under the Jefferson County Code. In addition, the Board finds in this Order that Petitioners have failed to demonstrate that any of the challenged aspects of the Brinnon MPR create an inconsistency such that one feature of the Jefferson County plan is incompatible with any other feature of its plan or regulation. The Board also finds that Petitioners have not demonstrated that the adoption of the Ordinance and environmental review fails to comply with the substantive and procedural requirements of Chapter 43.21C RCW including implementing regulations in Chapter 197-11 WAC and JCC 18.40.700 et. seq. including the procedural requirement for consideration of alternatives in the EIS. As the Board has not found any area of noncompliance, there is no basis for a finding of invalidity.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

II. PROCEDURAL HISTORY

The Petition for Review in this case was filed on March 19, 2008. Pleasant Harbor Marina, LLC (Pleasant Harbor) was granted Intervenor status on April 22, 2008.The Hearing on the Merits was held on August 25, 2008 in Port Townsend, Washington. Petitioners were represented by Gerald Steel. Respondent was represented by David Alvarez. Intervenor was represented by Sandy Mackie. All three Board members were present, with Board member McNamara presiding.

III. PRELIMINARY MATTERS

Intervenor filed motions to supplement the record on July 18, 2008[1] and August 19, 2008. In the July 18th Motion, Intervenor seeks to add Proposed Exhibits 7-250 through 7-254 to the record. These exhibits are recordings of the Master Planned Resort (MPR) workshops held on 9/11/07, 9/18/07, 9/25/07 and recordings of the proceedings before the Planning Commission on 10/3/07 and 10/31/07.[2] Pleasant Harbor also seeks to add Proposed Index #5-105, 16-190, and 16-191 which are documents provided on the County's public webpage regarding the proposal as part of the County's notification procedures.[3]

Intervenor's August 19th motion seeks to add the Appendices to the Draft Environmental Impact Statement (DEIS), Index No. 20-433 and Public Comments Log 1 and 2 of the Final Environmental Impact Statement, Index No. 20-571.

Petitioners cite three grounds for opposing the motions: (1) the DEIS Appendices and Pubic Comment Log are not necessary because Petitioners' substantive comments are already in the record; (2) the documents are unnecessarily large; (3) the motions were not filed with the Board by the due date set out in the Amended Pre-Hearing Order; and, (4)

[1] Due to the illness of Petitioners' attorney the Board elected to not address this motion within the customary twenty days.
[2] Motion to Supplement the Record at 1.
[3] Id.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

Intervenor has not demonstrated that the evidence is necessary or will be of substantial assistance to the Board.[4]

RCW 36.70A.290(4) permits a Board to take additional evidence when the Board finds that it is necessary or will be of substantial assistance to the Board in reaching a decision. In addition, WAC 242-02-540 provides:

> Generally, a board will review only the record developed by the city, county, or state in taking the action that is the subject of review by the board. A party by motion may request that a board allow such additional evidence as would be necessary or of substantial assistance to the board in reaching its decision, and shall state its reasons. A board may order, at any time, that new or supplemental evidence be provided.

The burden is on the party motioning to supplement the record to sufficiently demonstrate to the Board in its motion ". . . why the parties believe that the additional evidence would be necessary or of substantial assistance to the Board." Heikkila, Battin & Panesko v. City of Winlock & Cardinal FG Co., WWGMHB No. 04-2-0020c, December 16, 2004 (Order on Motions to Supplement).

Although Petitioners are correct that the motions to supplement the record were filed after the date set forth for such motions in the pre-hearing order, the Board may take supplemental evidence after that date in accordance with WAC 242-02-540 which provides "A board may order, at any time, that new or supplemental evidence be provided." In this case, it has become clear during the reviewing of the briefing and oral arguments at the Hearing on the Merits that an important issue in this case is the nature of the public participation process associated with this Comprehensive Plan Amendment. Related to that issue is the degree to which the proposal may have changed through the SEPA review process and the Planning Commission hearings to the time the amendment was finally adopted. In that context, the offered exhibits would be of substantial assistance to the Board in reaching its decision.

---

[4] Petitioners' Opposition to Motion to Supplement the Record at 1-4.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

For the foregoing reasons, Intervenor's Motion to supplement the record with proposed Exhibits 7-250, 7-251, 7-252, 7-253, 7-254, 5-105, 16-190, and 16-191, 20-433 and Public Comments Log 1 and 2 of the Final Environmental Impact Statement, Index No. 20-571 is GRANTED.

IV. BURDEN OF PROOF

For purposes of Board review of the comprehensive plans and development regulations adopted by local government, the GMA establishes three major precepts: a presumption of validity; a "clearly erroneous" standard of review, and; a requirement of deference to the decisions of local government.

Pursuant to RCW 36.70A.320(1), comprehensive plans, development regulations and amendments to them are presumed valid upon adoption:

> Except as provided in subsection (5) of this section, comprehensive plans and development regulations, and amendments thereto, adopted under this chapter are presumed valid upon adoption.RCW 36.70A.320(1).

The statute further provides that the standard of review shall be whether the challenged enactments are clearly erroneous:

> The board shall find compliance unless it determines that the action by the state agency, county, or city is clearly erroneous in view of the entire record before the board and in light of the goals and requirements of this chapter.RCW 36.70A.320(3)

In order to find the County's action clearly erroneous, the Board must be "left with the firm and definite conviction that a mistake has been made." *Department of Ecology v. PUD1*, 121 Wn.2d 179, 201, 849 P.2d 646 (1993).

Within the framework of state goals and requirements, the boards must grant deference to local government in how they plan for growth:

> In recognition of the broad range of discretion that may be exercised by counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter, the legislature intends for the boards to grant deference to the counties and cities in how they plan for growth, consistent with the requirements and goals of this chapter. Local comprehensive plans and development

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

> regulations require counties and cities to balance priorities and options for action in full consideration of local circumstances. The legislature finds that while this chapter requires local planning to take place within a framework of state goals and requirements, the ultimate burden and responsibility for planning, harmonizing the planning goals of this chapter, and implementing a county's or city's future rests with that community.RCW 36.70A.3201 (in part).

In sum, the burden is on the Petitioners to overcome the presumption of validity and demonstrate that any action taken by the County is clearly erroneous in light of the goals and requirements of Ch. 36.70A RCW (the Growth Management Act). RCW 36.70A.320(2).

Where not clearly erroneous and thus within the framework of state goals and requirements, the planning choices of local government must be granted deference.

V. DISCUSSION

***Issue No. 1*:** Whether the adoption of the Ordinance was in compliance with the public participation provisions under the GMA (RCW 36.70A.035, -.130(1)(d), -140 (as required by -.070 (preamble)) and JCC 18.45.010(2), -.060(4)(c), -.080(1)(b), (1)(c), (2)(b), (2)(c), and 18.15.132(1)) regarding ineffective and/or untimely notice and lack of effective opportunity for public comment all both for CP text, map amendment, and conditions all both before the Planning Commission and the BOCC; for inadequate Planning Commission Findings, Conclusions, and Recommendations not allowing preparation for BOCC hearing; for not having Planning Commission recommendations timely available before BOCC public hearing; for not having timely Planning Commission signed map and text sufficiently before BOCC public hearing; for considering amendments to Richards' property and DNR lease that were not docketed; for inadequate BOCC Findings and Conclusions, for allowing email comments without notice that ensures knowledge if comments were received?

A fundamental requirement of the GMA is that the local jurisdiction provide "early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans."[5] RCW 36.70A.140 requires the following of cities and counties planning according to the GMA (in pertinent part):

[5] RCW 36.70A.140

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

> Each county and city that is required or chooses to plan under RCW 36.70A.040 shall establish and broadly disseminate to the public a public participation program identifying procedures providing for early and continuous public participation in the development and amendment of comprehensive land use plans and development regulations implementing such plans. The procedures shall provide for broad dissemination of proposals and alternatives, opportunity for written comments, public meetings after effective notice, provision for open discussion, communication programs, information services, and consideration of and response to public comments... Errors in exact compliance with the established program and procedures shall not render the comprehensive land use plan or development regulations invalid if the spirit of the program and procedures is observed.

Additionally, RCW 36.70A.035 mandates that the public participation requirements of the Act shall include "notice procedures that are reasonably calculated to provide notice" to the public, but does not dictate any particular procedures that must be adhered to in a public participation program.

RCW 36.70A.070 requires that comprehensive plan amendments be adopted with public participation as provided by RCW 36.70A.140.

JCC 18.45.010(2) requires that Jefferson County comprehensive plan amendments be adopted with public participation similar to the requirements of RCW 36.70A.140.

With these requirements in mind, the Board will consider Petitioners' public participation challenges and the County and Intervenor's responses.

A. Text Amendment

Petitioners point out that the Brinnon Master Planned Resort (MPR) Comprehensive Plan Amendment includes a new paragraph of text to be inserted on page 3-23 of the Plan.[6] That text, Section 2 of Ordinance 01-0128-08, describes the number of acres and units of the Brinnon MPR. Petitioners argue this language was not in the original Brinnon MPR

[6] Petitioners' Opening Brief at 4.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

application, not reviewed by the Planning Commission, and not available for public review until it was adopted by the Board of County Commissioners (BOCC).

Petitioners assert that the failure to send the new text language back to the Planning Commission was a violation of RCW 36.70.140 and the spirit of the County's public participation program.

Petitioners argue that the adoption of this text amendment violates RCW 36.70.430, a provision of the Planning Enabling Act that the County has made part of its public participation process and specifically part of the process for approving site specific comprehensive plan amendments such as the Statesman proposal. Compliance with the Planning Enabling Act is a matter outside the Board's jurisdiction. The Growth Management Hearings Boards are invested with jurisdiction to determine whether a state agency, county, or city planning under RCW 36.70A is in compliance with the requirements of that Chapter, Chapter 90.58 RCW as it relates to the adoption of shoreline master programs or amendments thereto, or Chapter 43.21C RCW as it relates to plans, development regulations, or amendments, adopted under RCW 36.70A.040 or Chapter 90.58 RCW.[7] However, Petitioners point to a provision of the County Comprehensive Plan which provides that the process for adopting site specific amendments to the Plan shall incorporate " the procedures contained within Chapter 36.70 RCW and the Jefferson County development regulations…".[8] While the Board does not have jurisdiction over Chapter 36.70 RCW, the Planning Enabling Act, where the County has imposed the requirements of the Planning Enabling Act upon itself as part of its process for adopting site specific plan amendments pursuant to RCW 36.70A.140, the Board has jurisdiction to review whether the County has complied with these provisions as a means of satisfying the GMA's public participation program provisions.

[7] RCW 36.70A.280(1)(a).
[8] Exhibit 12-95-69 to Petitioner's Brief; County Comprehensive Plan at 1-20.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

The provision of the Planning Enabling Act that Petitioners assert the County violated in this situation is RCW 36.70A.430 which states:

> When it deems it to be for the public interest, or when it considers a change in the recommendations of the planning agency to be necessary, the board may initiate consideration of a comprehensive plan, or any element or part thereof, or any change in or addition to such plan or recommendation. The board shall first refer the proposed plan, change or addition to the planning agency for a report and recommendation. Before making a report and recommendation, the commission shall hold at least one public hearing on the proposed plan, change or addition.

Petitioners also contend that the County did not give the public an opportunity to comment on the text amendment in violation of JCC 18.45.010(2) which requires "an opportunity for public comment on any proposed amendments".[9] The map in FEIS and the Planning Commission recommendation adopted in November, 2007 are what was eventually adopted by the County. The record demonstrates that the text amendment at issue did not differ in substance from the site specific plan amendment described in the DEIS and the FEIS and the recommendation of the Planning Commission.[10] The DEIS, the FEIS, and the Planning Commission proposal all include in the project's description the acreage of about 256 acres, a total of 890 residential units at the golf course resort and the marina, an 18 hole golf course, and commercial space at the golf course and the marina. Furthermore, Petitioners did in fact comment on this proposal during the review of DEIS noting that "The project should be downsized from 890 units".[11]

RCW 36.70.430 does not require the exact wording of the text amendment to be included in the Planning Commission's recommendation. Here, the Planning Commission provided a description of the property included in the MPR and the text amendment does not differ in substance from the proposal. Also, the text amendment does not change the substance of the proposal on which citizens could comment at the Planning Commission and the BOCC

---

[9] Petitioners' Opening Brief at 6.
[10] Exhibit 1-9 of the County's Hearing Brief at Exhibit D1. Exhibit 14-100, Ordinance 01-0128-008 at 16, Exhibit 10-75, Exhibit 20-432 at 1-1 – 1-17, and Exhibit 20-57l, at 1-4 to 1-17.
[11] Exhibit 8-272-1.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

hearings. Therefore, the Board finds that the adoption of the text amendment did not violate Jefferson County's process for adopting site specific comprehensive plan amendments and its public participation program.

Conclusion: Petitioners have failed to demonstrate Section 2 of Ordinance 01-0128-08 was adopted in violation of the JCC 18.45.010(2), RCW 36.70A.140, and RCW 36.70A.070.

B. 30 Conditions of Approval in Finding 63

Petitioners argue that it was inappropriate for the County to have adopted conditions for the Brinnon MPR that could not be commented upon or reviewed by the public and that there was no authority under the Planning Enabling Act, Chapter 36.70 RCW, or the Growth Management Act, Chapter 36.70A RCW, to do so.[12] Petitioners claim that conditions that are intended to interpret, moderate or control a Comprehensive Plan Amendment must be processed as part of the Plan Amendment, including noticing prior to Planning Commission Hearings.[13] In this instance, Petitioners point out, the Board of County Commissioners (BOCC) adopted 30 conditions of approval, as part of Finding 63 to Ordinance 01-0128-08, without any hearing on the conditions.

The County responds that the 30 conditions were not placed in the Ordinance as a Comprehensive Plan amendment, but to shape the contours of the subsequent project-level environmental review, the eventual permitting process and the relationship of the MPR to state agencies, tribes and junior taxing districts such as school district's and PUDs.[14] The County argues that the 30 conditions must be seen in the context of the five-step approval process wherein the first step is the designation of the MPR, the second is creation of a development agreement and development regulations, the third is project-level SEPA

[12] Petitioners' Opening Brief at 8.
[13] Id.
[14] County's Brief at 18.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

review, the fourth is platting and completion of infrastructure, and the fifth is issuance of building permits.[15]

The Board notes that Findings 36 and 37 of the Ordinance support this interpretation: that "only a Comprehensive Plan amendment was under consideration, and that the development agreement and zoning code guiding MPR projects will come before it in a subsequent process after the adoption of this CP amendment. A subsequent development agreement and zoning code shall be consistent with this CP amendment."[16]

This described process is consistent with the Jefferson County comprehensive plan which allows the processing of amendments for Master Planned Resorts (MPR) in this sequence.[17] Additionally, the Jefferson County code does not allow for development of MPRs unless specific requirements including provision of adequate infrastructure and protection of critical areas are met.[18]

Furthermore, and as confirmed during questioning at the Hearing on the Merits, the conditions of approval contained in Finding 63 reflect the County's response to the specific concerns raised during the public process.

Of additional relevance to the resolution of this issue is the consideration of the scope of the action under review. As noted, the adoption of the Comprehensive Plan Amendment was but the first step of a five step process that would lead to the development of the Brinnon MPR. It is only this first step that is relevant for purposes of this appeal. In this step, the Planning Commission recommended adoption of the Comprehensive Plan map amendment to apply the Master Planned Resort designation to the lands in question. The Planning

[15] See, Exhibit No. 16-83.
[16] Ordinance 01-0128-08 at Finding 36.
[17] Jefferson Comprehensive Plan at Policy LNP 24.2. (Jefferson County Plan at 3-65).
[18] JCC at 18.15.126 and 18.15.135.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

Commission recommended seven conditions of approval. The Board of County Commissioners did not alter that recommendation except to add additional conditions.[19]

Thus, the BOCC did not alter the Planning Commission's recommendation, except in the sense that it reflected additional consideration of public input on how the project should be conditioned *during subsequent phases of approval*. Under JCC 18.45.080(2) the BOCC is obligated to conduct additional public hearings only when it "deems a change in the recommendation of the Planning Commission to be necessary". RCW 36.70.430, adopted as part of the County code for processing site specific comprehensive plan amendments, requires a referral to the Planning Commission for review and hearing, if the BOCC makes a change in the Planning Commission's recommendation. Where, as here, the BOCC accepted the Planning Commission's recommendation regarding the Comprehensive Plan amendment, and went further in adding conditions of approval to apply in later phases of approval, no further public hearing was necessary.

***Conclusion*:** Petitioners have failed to demonstrate that adoption of conditions of approval for the Brinnon MPR was a violation of the GMA's or Jefferson County's public participation requirements.

C. Map Amendments - Legal Description and Parcel Numbers

Petitioners note that the legal descriptions are included in Ordinance 01-0128-08 for 14 parcels, yet the project as noticed by the Planning Commission in its Notice of Hearing describes the project as 13 parcels.[20] Petitioners argue there was inadequate notice to the public as to how many parcels were intended to be included in the Map Amendment.

While the County and Intervenor address the discrepancy in terms of whether the 14th parcel was the "Richards' family parcel", Petitioners suggest that this merely demonstrates

[19] The Board has reviewed the Planning Commission's proposed conditions of approval and finds that they were incorporated into Finding 63's conditions of approval, as summarized in the table on page 20 of the County's hearing brief.

[20] Petitioners' Opening Brief at 11.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

that they do not understand the nature of the discrepancy in the maps, pointing out that the original application included 13 parcels, not including the "Cell D parcel" but including the Richards' family parcel.[21] The County asserts that the map adopted by Ordinance No. 01-0128-08, included the parcels in the DEIS and FEIS proposals, which Petitioners concede include the Richards' family parcel,[22] plus the DNR Lease land.

The DEIS was issued on September 5, 2007[23] and the FEIS was issued on November 27, 2007.[24] The DEIS at page 1-13 clearly defines the Maritime Village Subarea as including the "DNR Lease" land within the subarea in Figure 1-13. (Similar material is on page 1-13 of the FEIS). On page 1-17 this area is described as "Marina side – 37+/- acres upland and 15+/- acres tidelands." Both the DEIS and FEIS contain a Figure 1-4 on page 1-3 with a map showing the DNR Lease land within the Brinnon Subarea – Conceptual Master Plan Area Ownership and describe the acreage as 310.6 (325.8 including DNR Lease). At the bottom of the page it states, "The proposed Master Planned Resort is located on the 'Statesman' property (approximately 256 acres) upland and 15.2 acres of DNR marina lease area." The County held three public workshops in Brinnon on September 11, 18 and 25, 2007,[25] and a public hearing before the Planning Commission on October 3, 2007 to allow the public to address concerns arising from the application and the DEIS. Based on the text and maps in the DEIS, the public would have been able to ascertain that the scope of the proposal included the DNR Lease land. Petitioners have not demonstrated that the notice for the Planning Commission hearing misled the public or caused a public participation violation.

Petitioners' arguments that the applicant never had a written agreement with the Richards family and that there is no record of a written agreement with the Department of Natural

---

[21] Petitioners' Reply Brief at 17.
[22] Id.
[23] Exhibit 20-432.
[24] Exhibit 20-571.
[25] Exhibits 10-38, 10-45, 10-50 and 10-55.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

Resources for inclusion of this property within the Brinnon MPR[26] are outside the scope of this issue statement. Issue No. 1 asks the Board to consider, *inter alia,* whether the County violated the public participation requirements of the GMA "for considering amendments to Richards' property and DNR lease that were not docketed". A failure to obtain such approvals, if such is the case, is not an issue of public participation.

Conclusion: Petitioners have failed to demonstrate there was inadequate notice to the public as to how many parcels were intended to be included in the Map amendment in violation of RCW 36.70A.035.

D. Notice of Planning Commission Recommendation

Petitioners allege that there was not effective notice of the Planning Commission's recommendation regarding the MPR boundary, and suggest that it should have been available ten days prior to the BOCC hearing. Petitioners state that the Planning Commission's recommendation was first available to the public at the December 3, 2008, public hearing. Petitioners point out that JCC 18.45.010 requires "public meetings after effective notice".[27]

The County points out four crucial facts: 1) the proposal for the MPR boundary dated back to at least 2002 and the Brinnon Subarea Plan; 2) the boundary for the reduced MPR proposal had been available for public comment since the publication of the Draft EIS in September 2007; 3) the public comment period for comments to the BOCC was extended to December 7, 2007 because of a snowstorm; and, 4) Petitioners were able to comment on the process as late as January 14, 2008.[28] Intervenor points out that the Planning Commission recommendation was completed on November 20, 2007 and forwarded to the BOCC in a memorandum dated November 28, 2007.[29] Intervenors note that Petitioners

[26] Id.
[27] Petitioners' Opening Brief at 12.
[28] County's Brief at 22.
[29] Intervenor's Brief at 16.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

were active participants in the review process and make no claim that as of mid-November they were unaware of the Planning Commission's recommendations.[30]

While Petitioners assert that they should have had ten days to comment on these recommendations, Jefferson County's code does not provide a timeframe for when the written Planning Commission recommendations should be available to the public. Instead the County's Comprehensive Plan provides that the process for approving site specific plan amendments should include a hearing both before the Planning Commission and the BOCC. The County gave notice of the BOCC December 3, 2007 hearing on November 20, 2008. JCC 18.45.080(2)(b) provides that the BOCC will consider the Planning Commission's recommendation on comprehensive plan amendments at a regularly scheduled meeting. These code provisions for comprehensive plan amendments are currently deemed compliant, so any inadequacy of code provisions are not within the Board's purview here.

The County asserts and the record confirms that the Planning Commission finalized its recommendations at its November 20, 2007 meeting. While the County did not have written recommendations available for general distribution until the December 3, 2007 public hearing, the notice for the public hearing on the 2007 comprehensive plan cycle specifically mentions the Brinnon Master Planned Resort. The published notice on November 21, 2008 gave contact information for the Community Development Department for persons desiring further information. While this process is less than ideal, interested persons could obtain information about the Planning Commission's recommendation after November 21, 2007.[31]

Additionally, the December 3rd hearing was not the Petitioners' only opportunity to comment. Another opportunity was provided for public input on December 6th and written comments were accepted under December 7th. Further, in this instance, the Planning Commission did

---

[30] Id.
[31] Exhibit 10-72.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

not change the proposal that was presented in the DEIS on which the public had numerous opportunities to comment.

By referring to the fact that the map of the MPR boundary was signed on January 14, 2008, Petitioners appear to suggest they were unaware of the proposed boundary until after the close of the public comment period. While the signed map was not delivered until early January, 2008, it was consistent with the map on page 1-4 in the FEIS in the December 3, 2007 staff report that conveyed the Planning Commission's recommendation. This map is also consistent with the map in the DEIS on which the public had opportunities to comment. Therefore, the Board concludes that Petitioners have not shown that they were deprived of "effective notice" by not having the signed map available at the December 3, 2007, BOCC public hearing.

***Conclusion*:** Based on the foregoing and in light of the entire record, Petitioners have not carried their burden of proof in regards to their allegations that they were deprived of "effective notice" of the Planning Commission's recommendations or that the County failed to comply with JCC 18.45.010 and RCW 36.70A.035.

E. Planning Commission Findings

Petitioners argue that the County failed to comply with JCC 18.45.080(1)(b) and (c) in that its recommendation of approval is without any of the required findings.[32]

Petitioners appear to suggest, by the reference to the Planning Commission's written recommendation at Exhibit 16-205-6 and -7, that the findings were required to have been made in writing. In fact, JCC 18.45.080(1)(b) and (c) contain no requirement for written findings. Instead, it is apparent that the Planning Commission addressed the findings required by JCC 18.45.080(1)(b) and (c) in oral findings, as reflected in its minutes.[33]

[32] Petitioners' Opening Brief at 12.
[33] Exhibit 7-28 and 7-32.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

JCC 18.45.080(1)(b)(i), (ii) and (iii) require findings regarding changed circumstances, assumptions, and values of Jefferson County residents. Here, the record reflects that there was no consensus on "changed circumstances"; that the Planning Commission found that "assumptions of the Comprehensive Plan are not all valid", and; that as to countywide attitudes, values within the Comprehensive Plan, the Planning Commission was "in support".[34]

As to findings required by JCC 18.45.080(1)(c)(i), the Planning Commission did not propose findings with regard to site specific concurrency. When it resumed deliberations on the proposal on November 14, 2007, the record reflects that it addressed the findings required by JCC 18.45.080(1)(c)(ii) – (viii). The Planning Commission voted on and accepted all findings except (vii), the adequacy or availability of urban facilities, which it found to be non-applicable.[35]

While the Planning Commission did not reach consensus on specific findings regarding changed circumstances, JCC 18.45.080(1)(b) does not require the Planning Commission to make a finding of changed circumstances, but rather that they "consider" such. The record reflects this consideration did occur. JCC 18.45.080(1)(c) on the other hand does not refer to mere "consideration" but requires specific findings. However, in light of the nature and early stage of this approval it is reasonable to conclude that the Planning Commission could not make findings regarding whether this proposal meets concurrency requirements and "does not adversely affect levels of service standards for other public facilities and services." The Planning Commission then accepted by consensus that "The proposed amendment is consistent with the Growth Management Act, Chapter 36.70A,RCW, the County-wide Planning Policy for Jefferson County, and any other applicable inter-jurisdictional policies or agreements, and any other local, state or federal laws."[36]

---

[34] Exhibit 28.
[35] Exhibit 7-32, at 3.
[36] Id.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

Thus, the record reflects that contrary to Petitioners' allegation that "The Planning Commission recommendation of approval is without any of the required findings necessary for such a recommendation of approval"[37], the Planning Commission made all applicable findings and substantially complied with JCC 18.45.080(1)(b) and (c).

***Conclusion*:** The Planning Commission made all applicable findings and substantially complied with JCC 18.45.080(1)(b) and (c).

F. Signed Map

Petitioners claim that the County did not have the required map from the Planning Commission as required by RCW 36.70.400 which they claim is required as part of the County's public participation program.[38] The County asserts that although the County's Comprehensive Plan may mention the Planning Enabling Act, that does not extend or alter the Board's jurisdiction. However, as the Board discussed *supra*, the County included the provisions of the Planning Enabling Act in its process for considering site specific comprehensive plan amendments, therefore the Board may review whether the County has satisfied these requirements, as a means of complying with GMA. Further, as Intervenor points out, while the signed map was not delivered to the BOCC hearing, the map showing the Planning Commission's recommendation was referenced in the December 3, 2008 staff report informing the BOCC of the Planning Commission's recommendation. This map is consistent with the signed map. The Petitioners have not shown that the lack of a signed map caused the public to experience confusion over this point.

***Conclusion*:** While not including a signed map does not fulfill the exact requirement of RCW 36.70.400, as incorporated in the Jefferson County Code, the Board finds that this failure is not one that "renders" this comprehensive plan amendment "invalid" as the County fully described and referred to the FEIS map of the proposal that was consistent with the one eventually adopted. Therefore, in light of the entire record, the Board finds that the

[37] Petitioners' Opening Brief at 12.
[38] Id. at 13.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

County did not violate the spirit of its public participation program and finds that the failure to deliver a signed map with the Planning Commission recommendation is not sufficient to find that the County violated RCW 36.70A.140 in the adoption of the Brinnon MPR.

G. Failure to Remand Recommendations to Planning Commission

Here, Petitioner again alleges that, pursuant to RCW 36.70.430, if the BOCC wishes to change the Planning Commission recommendation on a Comprehensive Plan Amendment, it must refer the change back to the Planning Commission for an additional public hearing.[39]

As discussed *supra,* the County adopted provisions of Chapter 36.70 RCW as part of the process for adopting site specific plan amendments such as the one proposed by Statesman. Also, as discussed *supra,* the Planning Commission did deliver a description of the MPR and clearly referenced the map in the FEIS both of which were consistent with the BOCC's final action. Therefore, because the County did not change the substance of the Planning Commission's recommendation, nothing occurred that required referral to the Planning Commission nor was there a violation of JCC 18.45.020, RCW 36.70A.140, or RCW 36.70A.070.

Conclusion: The BOCC accepted the recommendation of the Planning Commission by adopting the map as Exhibit B of Ordinance 01-0128-08 and incorporated the Planning Commission's description of the Brinnon MPR proposal into the text amendment, so no violation of JCC 18.45.010, RCW 36.70A.140, and RCW 36.70A.070 occurred.

Portions of the Issue Statements not addressed in this Order were not briefed or argued by Petitioner and are deemed abandoned.

Issue No. 2: Whether the adoption of the MPR designated by the Ordinance into the Comprehensive Plan (which includes the Brinnon Subarea Plan), the MPR-related Comprehensive Plan amendments, and the Ordinance comply with the provisions of RCW 36.70A.360(1) regarding retaining a setting of significant natural amenities and primary

[39] Petitioners' Opening Brief at 13

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

focus on short-term visitor accommodations and with a range of recreational facilities, (2) regarding limiting on-site facilities to resort use and preventing shared off-site facilities and utilities from serving any non-urban areas, and regarding application of RCW 90.03 and 90.44 for water, (3) regarding other than short-term visitor accommodations being supportive, (4)(b) regarding CP and DR failure to preclude new suburban development outside the MPR, and (4)(e) regarding impacts fully considered and mitigated; 36.70A.020(1) regarding inadequate facilities and services, (2) regarding inappropriate conversion to golf course, (5) regarding encouraging growth not within capacity of public services and facilities, (9) regarding conserving fish and wildlife habitat, (10) regarding protecting the surrounding rural environment, (11) for public participation violations, (12) regarding addressing adequate facilities and services before MPR designation, (14) regarding shoreline protection; 36.70A.070(preamble) regarding internal consistency of MPR amendment including with LNG 24.0 and implementing policies (including 24.2 regarding CP amendment process evaluating all environmental impacts of all phases and owner must initiate amendment, 24.3 regarding all considered MPR property must be in the initial proposal and no new adjacent suburban development, 24.5 regarding predominantly short-term visitor accommodations, 24.6 regarding requirement that facilities including marina primarily for resort visitors and not local residents, 24.7 requiring urban levels of service, 24.8 requiring facility and service impacts to be fully considered and mitigated, 24.9 regarding screening development and defining sufficient areas and types of open space, 24.10 regarding environmentally sensitive areas, 24.12 requiring MPR designation to follow development regulations including JCC 18.15.123(2) regarding insufficient short term visitor accommodations, (2) regarding shorelines, (3) regarding phasing, (4) regarding adequate open spaces and sufficient services, (5) regarding adequate services oriented to the MPR, (6) regarding public views and natural features, (7) regarding full consideration and mitigation of impacts, and (8) regarding adverse effects on surroundings, 18.15.135, 18.15 and 18.45) and including Subarea Plan and LNP 25.2 regarding preserving natural drainage systems, and failure to update Subarea Plan before or while adopting MPR, (1) regarding general location and extent of uses, population densities, building intensities and population growth for MPR with no current limits on commercial development or on residential unit or building areas or heights, regarding protection for public water supplies, regarding analysis with valid rainfall statistics and guidance for avoiding water pollution; (6)(a)(iii) considering the MPR; 36.70A.110(4) regarding urban services provided to MPR in manner that does not provide such service to rural area; 36.70A.110(2) and 36.70A.115 regarding growth allocation and amended needs and capacity analysis countywide consistent with MPR; 36.70A.120 regarding ordinance consistency with CP, 36.70A.210(1) regarding consistency with CPPs, 36.70A.480 regarding shoreline protection, and generally by failing to have goals and policies adopted with the MPR CP amendment that define how this MPR will meet these GMA requirements to give direction for the adoption of implementing development regulations and a development agreement both only reviewable under RCW 36.70C?

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

Alleged Internal Inconsistencies – Brinnon Subarea Plan

RCW 36.70A. 070 requires (in pertinent part):

> …The plan shall be an internally consistent document and all elements shall be consistent with the future land use map…

Before beginning this discussion of alleged inconsistencies, it should be noted that not every area of vagueness or ambiguity in a comprehensive plan rises to the level of an internal inconsistency within the meaning of the preamble of RCW 36.70A.070. Consistency means that no feature of the plan or regulation is incompatible with any other feature of the plan or regulation; no feature of one plan may preclude achievement of any other feature of that plan or any other plan.[40] Also see WAC 365-195-500.

A. Conceptual MPR

Petitioners allege that the Brinnon MPR cannot be "conceptual" in the Brinnon Subarea Plan and "adopted" in the Comprehensive Plan.[41] However, the Brinnon Subarea Plan map shows a conceptual area within which a master-planned resort may be located. The Statesman proposal is located within that area but does not include certain properties such as the second marina, nor the Tudor and Jupiter properties.[42] The County confirmed at oral argument that portions of the conceptual area still remain outside the Statesman proposal. Therefore, portions of the "conceptual" Brinnon MPR area remain as yet unadopted. Petitioners have failed to demonstrate a lack of GMA compliance in this regard.

Conclusion: Petitioners have not demonstrated that an inconsistency in the Brinnon Subarea Plan associated with describing the Brinnon MPR as "conceptual" will preclude the achievement of any other feature of that plan.

A. Rural Residential Designation

---

[40] Camp Nooksack Association v. City of Nooksack, WWGMHB No. 03-2-0002 (FDO, 7/11/03)
[41] Petitioners' Opening Brief at 15.
[42] See index number 20 -- 571, page 1-3.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

Petitioners note that map BR- 3 in the subarea plan still shows a Rural Residential (RR) designation while the Comprehensive Plan map includes the Brinnon MPR designation.[43] As illustrated in Exhibit 16 -- 83, the County intends to employ a phased process wherein zoning changes will be approved subsequent to the approval of comprehensive plan amendments. Modification of map BR -- 3 will be made during the second phase. Thus the Board does not find an internal inconsistency that would preclude achievement of the remainder of the plan.

Conclusion: Petitioners have not demonstrated an inconsistency in the Brinnon Subarea Plan associated with map BR- 3.

B. Policy 3.0

Petitioners allege that the designation of such a large MPR at Black Point is internally inconsistent with Brinnon Flats continuing to develop as the main commercial and community center of the Brinnon area as provided by Policy 3.0.[44] Petitioners' focus on the 60,000 sq.ft. scale of the commercial area within the MPR is misplaced. The FEIS describes the commercial facilities as including a restaurant, conference center, and spa all of which are intended to serve the resort.[45] Petitioners have not demonstrated that these facilities would supplant the commercial and community facilities in Brinnon Flats.

There has been no showing that this aspect of the plan is inconsistent with policy 3.0 and thereby creates an internal inconsistency.

Conclusion: Petitioners have not demonstrated an inconsistency in the Brinnon Subarea Plan associated with Policy 3.0.

C. LNP 24.3

---

[43] Petitioners' Opening Brief at 16.
[44] Petitioners Opening Brief at 16.
[45] Ex. 20-571, FEIS at 1-6.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

Petitioners allege that the failure of the County to further limit suburban development in the "potential strip mall" outside the Brinnon MPR on Highway 101 conflicts with LNP 24.3. LNP 24.3 provides:

> The process for siting a master planned resort and obtaining the necessary Comprehensive Plan designation shall include all property proposed to be included within the MPR and shall further include a review of the adjacent Comprehensive Plan land use designations/districts to ensure that the designation of a master planned resort does not allow new urban or suburban land uses in the vicinity of the MPR. This policy should not be interpreted, however, to prohibit locating a master planned resort within or adjacent to an existing Urban Growth Area or within or adjacent to an existing area of more intense rural development, such as an existing Rural Village Center or an existing Rural Crossroad designation.

Petitioners assert that this policy requires the County, when establishing an MPR land use designation, to ensure that it does not allow urban or suburban development in the vicinity of the MPR.[46] Petitioners also argue that the County's action further violates RCW 36.70A.360(4)(b) which requires that the comprehensive plan and development regulations preclude new urban or suburban land uses in the vicinity of the Master Planned Resort. Petitioners suggest that the Subarea Plan must be amended to clarify that no new urban or suburban development will be allowed outside the current adopted Brinnon MPR.

Both LNP 24.3 and RCW 36.70A.360(4)(b) prohibit "new urban or suburban land uses in the vicinity of the MPR". Petitioner relies upon the FEIS as evidence that there is pressure for suburban development outside the Brinnon MPR on Highway 101.[47] However, Petitioners present neither argument nor evidence that development allowed under the County's current UDC would permit such urban or suburban land uses. Rural scale development that is permitted under the County's rural area zoning would not be inconsistent with either LNP 24.3 or RCW 36.70A.360(4)(b).

---

[46] Petitioners' Opening Brief at 17.
[47] Id.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

***Conclusion*:** Petitioners have not demonstrated an inconsistency in the Brinnon Subarea Plan associated with Policy *LNP 24.3*

D. Failure to Make Site-Specific Findings

Petitioners assert that the County has failed to comply with that provision of the Brinnon Subarea Plan that provides:

> Actual designation of an MPR district can only be accomplished through a site-specific MPR application consistent with the requirements of the Jefferson County Comprehensive Plan (including the Brinnon Subarea Plan) and the Unified Development Code.[48]

Petitioners argue that it is premature to move forward with the designation of the Brinnon MPR because the County has not committed to the scale and intensity of uses proposed by the project, as indicated by the lack of specificity in the text amendment. They further argue that the large number of conditions attached to the Comprehensive Plan Amendment approval show that the County has not decided that the site specific application is consistent with all Plan and Code requirements.[49]

The suggestion that the County has not determined that the site specific application is consistent with the Comprehensive Plan and Subarea Plan is refuted by the findings contained in Ordinance 01-0128-08. The County found:

> 34. Step 5: The Board entered an affirmative statement that consistency with the Jefferson County Comprehensive Plan, specifically Land Use Policies 24.1-24.13, has been achieved by the applicant, as each of the pertinent criteria are met by this proposal. . . .
>
> 35. Step 6. The Board entered an affirmative statement that consistency with the Brinnon Subarea Plan, adopted May 1, 2002, specifically Goals 1.0 and Policies 1.1-1.3 is achieved, as each of the pertinent criteria are met by this proposal.

[48] See, Ex. 5-3 at 46.
[49] Petitioners' Opening Brief at 19.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

The County's findings further illustrate that it was in the midst of a "14 step process for decision-making"[50] wherein "the development agreement and zoning code guiding MPR projects will come before it in subsequent process after the adoption of this CP amendment."[51]

As noted *supra,* both the County's comprehensive plan and development regulations authorize this process.[52] The Jefferson County Code includes many of the requirements for MPRs that are detailed in the findings. These requirements include a master plan that must be reviewed and recommended by the Planning Commission and approved by the BOCC. The master plan must, among other specifications, list the allowable uses, densities and intensities, and how they will be distributed; show how the natural amenities of the site will be protected; and document how sufficient services and facilities will be provided and concurrency will be met. [53] The Jefferson County Code further requires a development agreement approved by the BOCC that contains development standards for: (1) permitted uses, densities, and intensities; (2) provisions for open space, public access to shorelines, visitor orientated and short term residential accommodations, on-site recreational facilities and retail commercial services; and, (3) mitigation measures required by SEPA. [54] Finally, MPR development cannot proceed unless it meets certain criteria to ensure consistency with Jefferson County plan and code requirements.[55] Thus, a determination that the application will be consistent with the Unified Development Code is appropriate at a later stage.

Conclusion: Petitioners have failed to carry their burden to demonstrate an internal inconsistency because the County has not committed to the scale and intensity of uses proposed by the project.

---

[50] Ex. 14-4 at 4. Finding 29.
[51] Id. at Finding 36.
[52] LNP. 24.2 and JCC 18.15.126(3).
[53] JCC 18.15.126, 18.15.132.
[54] JCC 18.15.126(2).
[55] JCC 18.15.135.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

E. *Alleged Inconsistencies with the Conceptual Vision*

Petitioners' argument that the Brinnon MPR is inconsistent with the Subarea Plan because that Plan envisioned the intensity of the resort would not rival the Brinnon Flats area pursuant to P3.0 has been discussed and rejected above.

Petitioners assert that because RCW 36.70A.360(1) describes a Master Planned Resort as "a self-contained and fully integrated planned unit development in a setting of significant natural amenities", the Board should find that the requirement of a "setting of significant amenities" means both on and off the project site, and further find that the natural amenities on the site should predominate over the built environment.[56] Petitioners go so far as to urge the Board to require that the proposal be modified to keep 50% of the best tree-covered lands natural and undisturbed on the site.[57] Petitioners' reading of RCW 36.70A.360 not only has no support in the GMA, it advocates the type of "bright line tests" rejected by the courts[58].

Nothing in RCW 36.70A.360(1) suggests that the "setting of significant natural amenities" cannot be located in the surrounding area. In this case, the MPR is located in the vicinity of Hood Canal, the Olympic National Forest, and the Olympic Mountains. The Jefferson County Comprehensive Plan[59] and the Brinnon Subarea Plan[60] identify this as an area of natural amenities. Also, while the Jefferson County Code does not include specifications that the Petitioners desire, one of the criterion for the approval of MPRs requires environmental considerations to be employed in a MPR's design to incorporate and retain within the MPR natural features, historic sites, and public views. [61]

---

[56] Petitioners' Opening Brief at 20.
[57] Id. at 21.
[58] See, Viking Properties v. Holm, 155 Wn2d 112 (2005), Thurston County v. Western Washington Growth Management Hearings Board, 2008 Wash. LEXIS 812 (2008).
[59] See, Jefferson County Comprehensive Plan, at 3-23.
[60] See, Brinnon Subarea Plan at 45.
[61] 18.15.135(6).

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

***Conclusion*:** Petitioner has not demonstrated an inconsistency with the Plan's conceptual vision.

F. Alleged Inconsistencies with the Comprehensive Plan

Petitioners argue that the Comprehensive Plan map and text amendments should be found non-compliant with the GMA because the designation of a second MPR is internally inconsistent with the statement in the plan that Jefferson County has "one Master Planned Resort, Port Ludlow".[62] In fact, as Intervenors pointed out, [63] the statement in the Comprehensive Plan remains correct. Until such time as the Statesman proposal receives final approval the MPR is still conceptual. In fact, page 3-23 of the Jefferson County Comprehensive Plan states "Jefferson County has one *existing* master planned resort, Port Ludlow."[64] Several lines later, the Plan notes "The GMA also authorizes counties to allow for the development of *new* MPRs in accordance with RCW 36.70A.360". The italics are in the original, emphasizing that the County was well aware that, while Port Ludlow was the sole current MPR, new MPRs were permissible. The development regulations and development agreement must both be approved before the final MPR development approval may be granted under JCC 18.15.135. Until that time, Port Ludlow remains the only *existing* MPR in Jefferson County.

***Conclusion*:** Petitioners have not demonstrated that the designation of a second MPR is internally inconsistent with the statement in the plan that Jefferson County has "one Master Planned Resort, Port Ludlow" Until the final MPR development approval is granted under JCC 18.15.135 Port Ludlow remains the only *existing* MPR in Jefferson County.

***Overall Conclusion*:** Petitioners have failed to demonstrate that any of the challenged aspects of the Brinnon MPR create an inconsistency such that one feature of Jefferson County's plan is incompatible with any other feature of its plan or regulation. Likewise none

---

[62] Petitioners' Opening Brief at 22.
[63] Intervener's Brief at 34.
[64] Jefferson County Comprehensive Plan, at 3-23, Exhibit 12-95-59.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

of the challenged features preclude achievement of any other feature of its Plan or violate RCW 36.70A.070.

Alleged Lack of Compliance with RCW 36.70A.070(1)

Petitioners allege that while the County has defined in the text amendment that the Brinnon MPR will have 890 residential units within its 256 acres, RCW 36.70A.070(1) also requires a description of "building intensities" to define the limits of allowed commercial and industrial development.[65]

RCW 36.70A.070(1) requires in pertinent part that "The land use element shall include population densities, building intensities, and estimates of future population growth." Intervenor points out that the Comprehensive Plan as a whole contains these features and none of those provisions were at issue in the present appeal. Intervenors also note that the Plan provisions on MPRs have both goals and policies to control development at LNP 24.1-24.13 which the Board of County Commissioners found were met by this proposal.[66] Furthermore, it is clear from the Ordinance under appeal that the County approved a multi-step process in which new zoning code language and a development agreement would be approved subsequently, all as authorized by the Jefferson County Plan and Uniform Development Code. Building intensities will be defined and limited in the master plan and development agreement as specified in the Jefferson County Code. These will need further review and approval. Furthermore, the densities and intensities were analyzed within the DEIS and FEIS. The MPR must develop within the scope of that environmental review. No development permits can be issued until the BOCC finds that the MPR is consistent with the Jefferson County Plan, development code, and conditions imposed by the master plan and development agreement.

Conclusion: Petitioners have not demonstrated a violation of RCW 36.70A.070(1). Plan provisions on MPRs have both goals and policies to control development. The County

[65] Petitioners' Opening Brief at 22.
[66] Intervenor's Brief at 35.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

approved a multi-step process in which new zoning code language and a development agreement would be approved subsequently. Building intensities will be defined and limited in that process. Petitioners have not carried their burden of proof in regards lack of compliance with RCW 36.70A.070(1).

***Issue No. 3*:** Whether the adoption of the Ordinance and environmental review complies with the substantive and procedural requirements of chapter 43.21C RCW including implementing regulations in chapter 197-11 WAC and JCC 18.40.700 et seq. including the procedural requirement for an alternative in the EIS other than the no action alternative with less impact than the proposal and substantive requirements including inadequate analysis related to surface and ground water (including potable, stormwater (including adverse impacts to Hood Canal and shorelines) and wastewater) quality, quantity, reliability, saltwater intrusion and other impacts on and degradation of neighboring wells, Hood Canal, and aquifers and impacts of major storms with power failures, rain analysis, disposal of waste, habitat and significant species impacts, adverse impact on protecting surrounding rural character (including from signage, overuse, overdevelopment), emergency services including fire, police, medical and rescue, traffic related (including non-motorized) on roads, trails, Puget Sound water and air (including single emergency exit on Black Point Rd), protection of natural features, use of kettles for water storage and destruction of features of natural hollows and streams, increased use of marina, energy supply, light pollution at night, impacts from overuse of offsite recreational facilities, displacement impacts on long term residents, isolated wetland impacts, sustainability of development, impacts on Brinnon community and schools, and workforce unavailability?

The standard of review applicable to the review of a jurisdiction's compliance with SEPA was identified by the Board in *Hood Canal v. Jefferson County*, WWGMHB No. 03-2-0006 (CO 10/14/04):

> Petitioners also have the burden of showing a lack of SEPA compliance for GMA purposes under the clearly erroneous standard. *Durland v. San Juan County,* WWGMHB Case No. 00-2-0062c (Final Decision and Order, May 7, 2001). Whether an environmental impact statement (EIS) is adequate is a question of law. *Citizens v. Klickitat County,* 122 Wn.2d 619, 626, 866 P.2d 1256 (1993). The adequacy of an EIS is tested under the "rule of reason", which requires a "reasonably thorough discussion of the significant aspects of the probable environmental consequences" of the agency's decision. *Ibid.* The decision of the governmental agency must be accorded substantial weight. RCW 43.21C.090.

In the FDO issued in that case, the Board noted:

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

The required contents of an EIS are set out in WAC 197-11-440.[67][1] For nonproject actions such as comprehensive plan amendments, the general rules for the content of an EIS apply except that the lead agency (in this case, the County) is granted more flexibility in preparing an EIS than in project actions. This is "because there is normally less detailed information available on their environmental impacts and on any subsequent project proposals". WAC 197-11-442.

A. SEPA Policies

Petitioners challenge SEPA compliance on the basis that the Ordinance failed to cite the agency SEPA policy that is relied upon as the basis for each condition of approval contained in Finding 63.[68]

In finding 63 of Ordinance 01-0128-08, the County imposed conditions of approval on this Comprehensive Plan amendment "pursuant to the authority that is granted the County legislative authority under SEPA by RCW 43.21C.060, WAC 197-11-660 and Jefferson County Code 18.40.770."[69]

WAC 197-11-660, Substantive authority and mitigation, provides:

(1)Any governmental action on public or private proposals that are not exempt may be conditioned or denied under SEPA to mitigate the environmental impact subject to the following limitations:

(a) Mitigation measures or denials shall be based on policies, plans, rules, or regulations formally designated by the agency (or appropriate legislative body, in the case of local government) as a basis for the exercise of substantive authority and in effect when the DNS or DEIS is issued.

(b) Mitigation measures shall be related to specific, adverse environmental impacts clearly identified in an environmental document on the proposal and shall be stated in writing by the decision maker. The decision maker shall cite the agency SEPA policy that is the basis of any condition or denial under this chapter (for proposals of applicants). After its decision, each agency shall make available to the public a document that states the decision. The document shall state the mitigation measures,

---

[68] Petitioners' Opening Brief at 23.
[69] Exhibit 14-4, at 10.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

if any, that will be implemented as part of the decision, including any monitoring of environmental impacts. Such a document may be the license itself, or may be combined with other agency documents, or may reference relevant portions of environmental documents.

JCC 18.40.770 provides the County's substantive SEPA authority pursuant to WAC 197-11-660:

> (3)The county designates and adopts by reference the following county plans, ordinances and policies as the basis for exercise of county authority pursuant to this article:
>
> (a) The county adopts by reference the policies in the following Jefferson County plans and ordinances:
>
> (i) The Jefferson County Comprehensive Plan, as now exists or may hereafter be amended;
>
> (ii) The Jefferson County Shoreline Master Program, as now exists or may hereafter be amended;
>
> (iii) This Unified Development Code, as now exists or may hereafter be amended;
>
> (iv) The Jefferson County building code, Chapter 15.05 JCC, as now exists or may hereafter be amended;
>
> (v) The Jefferson County flood damage protection ordinance, Chapter 15.15 JCC, as now exists or may hereafter be amended;
>
> (vi) The Jefferson County stormwater management ordinance, JCC 18.30.070, as now exists or may hereafter be amended;
>
> (vii) The Jefferson County Road, Traffic and Circulation Standards, as they now exist or may hereafter be amended;
>
> (viii) The Secretary of the Interior's Standards for Rehabilitating Historic Buildings; and
>
> (ix) All other county plans, ordinances, regulations and guidelines adopted after the effective date of this Unified Development Code.

Thus, consistent with WAC 197-11-660, the County cited the agency SEPA policies that formed the basis of the conditions imposed. Petitioner has failed to demonstrate that the County was legally obligated to cite the supporting SEPA policy after each and every condition of approval. We do not read WAC 197-11-660 to impose such a requirement.

B. Alternatives

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

Petitioner argues that "Because the EIS did not contain an alternative with "a lower environmental cost or decreased level of environmental degradation" it should be found to be in violation of WAC 197-11-440(5)(b).[70]

WAC 197-11-440(5)(b) requires that among the range of alternatives considered in the EIS the following shall be included:

> (b) Reasonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation.

While the County[71] and Intervenor[72] respond that the County complied by studying the "no action alternative", Petitioners respond by noting that there must be a reasonable alternative that could feasibly attain the project objectives, but at a lower environmental cost, and the "no action alternative", while having less of an impact, does not meet the proposal's objectives.[73]

The FEIS considered three alternatives to the proposal. The "no action alternative" assumed the Master Plan proposal is withdrawn or denied, and the area develops under current zoning.[74] The Brinnon Subarea Plan alternative assumes that the entire area is included within the Master Plan, and as such is subject to the Master Planned Resort limitations on resort-based urban development.[75] This alternative includes the entirety of the area identified in the Brinnon Subarea Plan as potentially suitable for a Master Planned Resort, an area of 310 acres. The Hybrid alternative assumes that the lands outside the Statesman proposal develop under the County's RR1-5 guidelines.[76] These guidelines would allow one unit for five acres base density for residential units, and limited business uses. In the DEIS, the summary of impacts and mitigation requirements under the Hybrid alternative assumes

---

[70] Petitioners' Opening Brief at 24.
[71] Jefferson County's Brief at 27
[72] Intervenor's Brief at 44.
[73] Petitioners' Reply Brief at 24.
[74] Exhibit 20-571, FEIS at 4-1, et seq.
[75] Id, at 4-12 et seq.
[76] Id. at 4-20 to 4-22.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

that: a) the uses west of Highway 101 must be limited to uses consistent with small-scale resort and tourist service uses; b) the uses west of Highway 101 must be limited to onsite well and wastewater disposal and may not hook to urban facilities from the Master Planned Resort; and, c) all development west of Highway 101 shall be subject to development conditions identified in an approved stormwater management plan, wastewater disposal plan, and Public Works Department standards for roads.

While the Board agrees with Petitioners that the "no action alternative" does not meet the requirement of WAC 197-11-440(5)(b) because it does not "feasibly attain or approximate a proposal's objectives" this is not to say that the other alternatives considered likewise failed to meet this standard. Petitioners' rather brief (four line) argument on this point provided no factual argument to demonstrate that the County failed to consider an alternative that achieved the proposal's objectives at a lower environmental cost except to point to the statement in the Summary of the DEIS that the alternatives have "similar impacts since the bulk of the property is put to resort uses"[77]. However, this is far short of a comparison of the nature of the impacts of the different alternatives. Petitioner presented no evidence from which it could clearly be determined that any of the alternatives considered would not have a lower environmental cost or decreased level of environmental degradation. Consequently Petitioners did not carry their burden to demonstrate that none of the alternatives met the standard of WAC 197-11-440(5)(b).

C. Stormwater

Petitioner alleges that the SEPA analysis is inadequate with respect to stormwater management to be able to determine if it might be possible to reach zero discharge from the golf course site.[78] Further, they allege that the FEIS fails to analyze water quality impacts of the anticipated traffic associated with the development.[79]

---

[77] Exhibit 20-432 at xvi.
[78] Petitioners' Opening Brief at 24.
[79] Id. at 25.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

With regard to non-project proposals, WAC 197-11-442 provides:

> (1) The lead agency shall have more flexibility in preparing EISs on nonproject proposals, because **there is normally less detailed information available on their environmental impacts and on any subsequent project proposals**. The EIS may be combined with other planning documents.
>
> (2) The lead agency shall discuss impacts and alternatives **in the level of detail appropriate to the scope of the nonproject proposal** and to the level of planning for the proposal. Alternatives should be emphasized. In particular, agencies are encouraged to describe the proposal in terms of alternative means of accomplishing a stated objective (see WAC 197-11-060(3)). Alternatives including the proposed action should be analyzed at a roughly comparable level of detail, sufficient to evaluate their comparative merits (this does not require devoting the same number of pages in an EIS to each alternative).
>
> (3) If the nonproject proposal concerns a specific geographic area, **site specific analyses are not required, but may be included for areas of specific concern.** The EIS should identify subsequent actions that would be undertaken by other agencies as a result of the nonproject proposal, such as transportation and utility systems.
>
> (4) The EIS's discussion of alternatives for a comprehensive plan, community plan, or other areawide zoning or for shoreline or land use plans shall be limited to **a general discussion of the impacts of alternate proposals for policies contained in such plans**, for land use or shoreline designations, and for implementation measures. The lead agency is not required under SEPA to examine all conceivable policies, designations, or implementation measures but should cover a range of such topics. The EIS content may be limited to a discussion of alternatives which have been formally proposed or which are, while not formally proposed, reasonably related to the proposed action. (emphasis added).

As noted above, the action taken by the County in adopting Ordinance 01-0128-08 was but the first step of a multi-step process for the development of the Brinnon MPR. Furthermore, the County specifically conditioned the proposal to ensure that the environmental impacts on water quality/quantity and discharges from the golf course would be reviewed. Condition 63 (o) required that "Detailed review is needed at that project-level SEPA analysis to ensure

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

that water quantity and water quality issues are addressed."[80] Condition 63 (q) required that "Stormwater discharge from the golf course shall meet requirements of zero discharge into Hood Canal."[81]

In *Cathcart-Maltby-Clearview Community Council v. Snohomish County*, 96 Wn.2d 201, 210, 634 P.2d 853 (1981), the Supreme Court recognized the benefit of phased environmental review, noting that, at the early stages "it is extremely difficult to assess [a project's] full impact. Given the magnitude of the project, the length of time over which it will evolve and the multiplicity of variables, staged EIS review appears to be an unavoidable necessity." This is also true in the case of the Brinnon MPR. The environmental impacts of this project were studied at an appropriate level of detail, with provision for further environmental review at the project level stages of development. Petitioner has not demonstrated that this approach is clearly erroneous.

***Conclusion*:** Petitioners have not demonstrated that the County failed to consider an alternative which would "attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation". The environmental impacts of this project were studied at an appropriate level of detail, with provision for further environmental review at the project level stages of development. Petitioner has not demonstrated that this approach is clearly erroneous.

Issue No. 4: Whether any provision found in noncompliance in the other issues should also be found invalid for substantial interference with Goals 1, 2, 5, 9, 10, 11, 12, and 14?

Petitioners' argument for the imposition of invalidity rests on their claim of lack of public participation.[82] Petitioners assert that the County is currently working with Pleasant Harbor on the adoption of a Development Agreement that will vest the projects if the Comprehensive Plan amendment remains valid, and that such vesting should not be

[80] Exhibit 14-4 at 12.
[81] Id. at 13.
[82] Petitioners' Opening Brief at 14.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

allowed to occur without the prior benefit of public participation. This they argue substantially interferes with the fulfillment of Goal 11 of the GMA.[83]

In response Intervenor argues that Petitioners have not demonstrated that the County's actions materially interfere with its ability to comply with the GMA. Intervenor points out that MPRs are authorized by the GMA, the County Comprehensive Plan and development regulations have detailed sections on how to process a MPR to assure compliance with the GMA, and that the Statesman proposal is within an area identified in the Brinnon Subarea Plan as appropriate for an MPR.[84] Intervenors note that nothing in the present process vests any specific development activity, and that there are still public hearings and approvals necessary before any application can vest.[85]

A finding of invalidity may be entered when a board makes a finding of noncompliance and further includes a "determination, supported by findings of fact and conclusions of law that the continued validity of part or parts of the plan or regulation would substantially interfere with the fulfillment of the goals of this chapter." RCW 36.70A.302(1) (in pertinent part).

In this case, the Board has not found any of the challenged portions of the Brinnon MPR to be noncompliant with the GMA and thus there is no basis for a finding of invalidity.

Conclusion: The Board has found the challenged portions of the Brinnon MPR Comprehensive Plan amendment to be compliant with the GMA. There is no basis for a finding of invalidity.

VI. FINDINGS OF FACT

1. Jefferson County is a county located west of the crest of the Cascade Mountains that is required to plan pursuant to RCW 36.76A.040.

---

[83] Id.
[84] Intervenor's Brief at 48.
[85] Id. at 49.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

2. On January 28, 2008 the County adopted Ordinance No. 01-0128-08, amending the Jefferson County Comprehensive Plan to reflect that certain parcels of property in Brinnon, Washington shall be given an underlying land use designation of Master Planned Resort.
3. On November 27, 2007 the County's SEPA Responsible Official published the Final EIS for the Brinnon Master Planned Resort.
4. On March 19, 2008 Petitioners filed a timely appeal.
5. Petitioners have standing through participation in writing or orally in the adoption of Ordinance No.01-0128-08.
6. On April 22, 2008 the Board granted intervenor status to Pleasant Harbor.
7. Section 2 of Ordinance 01-0128-08 describes the number of acres and units of the Brinnon MPR.
8. The Planning Commission found that "This proposed MPR rezone of 256 acres on Black Point in Brinnon would create 890 units of permanent and transient housing," language similar in substance to the text of Section 2.
9. Ordinance 01-0128-08 adopted 30 conditions of approval as part of Finding 63 to Ordinance 01-0128-08 without an additional hearing on these conditions.
10. Findings 36 and 37 of the Ordinance found that "only a Comprehensive Plan amendment was under consideration, and that the development agreement and zoning code guiding MPR projects will come before it in a subsequent process after the adoption of this CP amendment. A subsequent development agreement and zoning code shall be consistent with this CP amendment."
11. The Jefferson County Plan (LNP 24.2) and the JCC 18.15.126(3) allow for a phased process for the approval of a MPR.
12. The conditions of approval contained in Finding 63 reflect the County's response to the specific concerns raised during the public process.
13. The Comprehensive Plan Amendment of Ordinance 01-0128-08 was the first step of a five step process that would lead to the development of the Brinnon MPR.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

14. In the first step, the Planning Commission recommended adoption of the Comprehensive Plan map amendment to apply the Master Planned Resort designation to the lands in question. The Planning Commission recommended seven conditions of approval.
15. Jefferson County included the provisions Planning Enabling Act, Chapter 36.70 RCW, in its process for approving site specific comprehensive plan amendments.
16. The Brinnon MPR map amendment is a site specific comprehensive plan amendment.
17. Under JCC 18.45.080(2) the BOCC is obligated to conduct additional public hearings only when it "deems a change in the recommendation of the Planning Commission to be necessary".
18. Under RCW 36.70.430, incorporated into the Jefferson County code, the BOCC needs to refer changes in a Planning Commission recommendation for further review and hold a hearing.
19. The Board of County Commissioners did not alter the Planning Commission's recommendation except to add additional conditions.
20. Although the legal description of the Ordinance 01-0128-08 includes 14 parcels, the project as noticed by the Planning Commission in its Notice of Hearing describes the project as 13 parcels.
21. The DEIS for the Brinnon MPR was issued on September 5, 2007 and the FEIS was issued on November 27, 2007.
22. The DEIS at page 1-13 defines the Maritime Village Subarea as including the "DNR Lease" land within the subarea in Figure 1-13. (Similar material is on page 1-13 of the FEIS).
23. On page 1-17 this area is described as "Marina side – 37+/- acres upland and 15+/- acres tidelands. " Both the DEIS and FEIS contain a Figure 1-4 on page 1-3 with a map showing the DNR Lease land within the Brinnon Subarea – Conceptual Master Plan Area Ownership and describe the acreage as 310.6 (325.8 including DNR Lease). At the bottom of the page it states, "The proposed Master Planned Resort is

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

located on the "Statesman" property (approximately 256 acres) upland and 15.2 acres of DNR marina lease area."

24. The County held three public workshops in Brinnon on September 11, 18 and 25, 2007, and a public hearing before the Planning Commission on October 3, 2007, to allow the public to address concerns based on the application and the DEIS.
25. The proposal for the MPR boundary dated back to at least 2002 and the Brinnon Subarea Plan.
26. The boundary for the reduced MPR proposal had been available for public comment since the publication of the Draft EIS in September 2007.
27. The public comment period for comments to the BOCC was extended to December 7, 2007 because of a snowstorm.
28. Petitioners were able to comment on the process as late as January 14, 2008.
29. The Planning Commission recommendation was completed on November 20, 2007 and forwarded to the BOCC in a memorandum dated November 28, 2007.
30. The County gave notice for the December 3, 2007, BOCC hearing on November 21, 2007 and provided contact information on how to receive information about the Planning Commission recommendation.
31. While the signed map was not delivered until early January 2008, it was consistent with the Planning Commission's earlier recommendation.
32. JCC 18.45.080(1)(b) and (c) contain no requirement for written findings. Instead, the Planning Commission addressed the findings required by JCC 18.45.080(1)(b) and (c) in oral findings, as reflected in its minutes.
33. As to JCC 18.45.080(1)(b)(i), (ii) and (iii), changed circumstances, assumptions, and values of Jefferson County residents, the record reflects that there was no consensus on "changed circumstances"; that the Planning Commission found that "assumptions of the Comprehensive Plan are not all valid"; and that as to County wide attitudes, values within the Comprehensive Plan, the Planning Commission was "in support".
34. As to JCC 18.45.080(1)(c)(i), the Planning Commission did not propose findings with regard to site specific concurrency.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

35. When it resumed deliberations on the proposal on November 14, 2007, the record reflects that it addressed the findings required by JCC 18.45.080(1)(c)(ii) – (viii).
36. The Planning Commission voted on and accepted all findings except (vii), adequacy or availability of urban facilities, which it found to be non-applicable at this stage of the MPR approval process.
37. While the Planning Commission did not reach consensus on specific findings regarding changed circumstances, JCC 18.45.080(1)(b) does not require a finding of changed circumstances, but only that they "consider" such. The record reflects consideration did occur.
38. The Planning Commission accepted by consensus that "The proposed amendment is consistent with the Growth Management Act, Chapter 36.70A., RCW, the County-wide Planning Policy for Jefferson County, and any other applicable inter-jurisdictional policies or agreement, and any other local, state or federal laws."
39. The Jefferson County Planning Commission did not sign a map showing approval of the Brinnon MPR boundary until January 14, 2008.
40. The Brinnon subarea plan map shows a conceptual area within which a master-planned resort may be located. The Statesman proposal is located within that area but does not include certain properties such as the second marina, and the Tudor and Jupiter properties.
41. The County confirmed at oral argument that portions of the conceptual area remain outside the Statesman proposal.
42. Map BR- 3 in the subarea plan still shows a Rural Residential (RR) designation while the Brinnon MPR designation has been amended on the comprehensive plan map. As illustrated in Exhibit 16 -- 83, the County employs a phased process wherein zoning changes will be approved subsequent to the approval of comprehensive plan amendments. Modification of map BR -- 3 will be made during the second phase.
43. Policy P3.0 describes the Brinnon Flats as continuing to develop as the main commercial and community center of the Brinnon area

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

44. The FEIS for the Brinnon MPR describes the commercial facilities as including a restaurant, conference center, and spa all intended to serve the resort.
45. LNP 24.3 and RCW 36.70A.360(4)(b) prohibit "new urban or suburban land uses in the vicinity of the MPR".
46. There is no evidence that rural scale development that is permitted under the County's rural area zoning would be inconsistent with either LNP 24.3 or RCW 36.70A.360(4)(b).
47. The County is in the midst of a "14 step process for decision-making" wherein "the development agreement and zoning code guiding MPR projects will come before it in subsequent process after the adoption of this CP amendment." A determination that the application will be consistent with the Unified Development Code is appropriate at a later stage.
48. The Brinnon MPR is located in the vicinity of Hood Canal, the Olympic National Forest, and the Olympic Mountains. The Jefferson County Comprehensive Plan and the Brinnon Subarea Plan identify this as an area of natural amenities.
49. Jefferson County has one Master Planned Resort, Port Ludlow.
50. Until such time as the Statesman proposal receives final approval the MPR is still conceptual.
51. In finding 63 of Ordinance 01-0128-08 the County imposed conditions of approval for this Comprehensive Plan amendment "pursuant to the authority that is granted the County legislative authority under SEPA by RCW 43.21C.060, WAC 197-11-660 and Jefferson County Code 18.40.770.
52. In addition to the "no action alternative" the EIS considered the MPR as proposed, the full resort alternative which assumed lands on both sides of US 101 were to develop at urban resort densities, and the hybrid alternative, which assumed that the MPR is developed and as a consequence the lands across US 101 would build out under rural resort and commercial guidelines.
53. The County specifically conditioned the proposal to ensure that the environmental impacts on water quality/quantity and discharges from the golf course would be

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

reviewed. Condition 63 (o) required that "Detailed review is needed at that project-level SEPA analysis to ensure that water quantity and water quality issues are addressed."

54. Condition 63 (q) required that "Stormwater discharge from the golf course shall meet requirements of zero discharge into Hood Canal.

55. Any Finding of Fact later determined to be a Conclusion of Law is adopted as such.

VII. CONCLUSIONS OF LAW

A. The Board has jurisdiction over the parties to this action.

B. The Board has jurisdiction over the subject matter of this action.

C. Petitioners have standing to raise the issues in this case.

D. Petitioners have failed to demonstrate Section 2 of Ordinance 01-0128-08 was adopted in violation of the GMA's public participation requirements. (RCW 36.70A.140, RCW 36.70A.035, RCW 36. 70A.070).

E. Where the BOCC accepted the Planning Commission's recommendation regarding the Comprehensive Plan amendment, and went further in adding conditions of approval to apply in later phases of approval, no further public hearing was necessary. No violations of JCC 18. 45.010(2) or the Jefferson County plan requirements for processing site specific comprehensive plan amendments occurred.

F. Petitioners have failed to demonstrate there was inadequate notice to the public as to how many parcels were intended to be included in the map amendment that violated RCW 36.70A.035.

G. Petitioners have not carried their burden of proof that they were deprived of "effective notice" of the Planning Commission's recommendations.

H. The Planning Commission made all applicable findings and substantially complied with JCC 18.45.080(1)(b) and (c).

I. The BOCC accepted the recommendation of the Planning Commission by adopting the map as Exhibit B of Ordinance 01-0128-08.

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

J. Petitioners have not demonstrated a violation of the public participation requirements of the Growth Management Act.

K. Petitioners have not demonstrated an inconsistency in the Brinnon Subarea Plan associated with describing the Brinnon MPR as "conceptual".

L. Petitioners have not demonstrated an inconsistency in the Brinnon Subarea Plan associated with map BR- 3.

M. Petitioners have not demonstrated an inconsistency in the Brinnon Subarea Plan associated with Policy P3.0.

N. Petitioners have not demonstrated an inconsistency in the Brinnon Subarea Plan associated with Policy *LNP 24.3.*

O. Petitioners have failed to carry their burden to demonstrate an internal inconsistency because the County has not committed to the scale and intensity of uses proposed by the project.

P. Nothing in RCW 36.70A.360(1) suggests that the "setting of significant natural amenities" cannot be located in the surrounding area.

Q. Petitioners have not demonstrated an inconsistency with the Plan's conceptual vision.

R. Petitioners have not demonstrated a violation of RCW 36.70A.070(1). Jefferson County has adopted Plan provisions on MPRs that have both goals and policies, as well as development regulations to control development of the MPR. The County approved a multi-step process in which new zoning code language and a development agreement would be approved subsequently. Building intensities will be defined and limited in that process.

S. Petitioners have not demonstrated that the County failed to consider an alternative which would "attain or approximate a proposal's objectives, but at a lower environmental cost or decreased level of environmental degradation" as provided for by WAC 197-11-440(5)(b).

T. The environmental impacts of this project were studied at an appropriate level of detail, with provision for further environmental review at the project level stages of

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

development. Petitioner has not demonstrated that this approach is clearly erroneous.

U. The Board has found the challenged portions of the Brinnon MPR comprehensive plan amendment to be compliant with the GMA, and thus there is no basis for a determination of invalidity.

V. Portions of the Issue statements not addressed in this Order were not briefed or argued by Petitioners and are deemed abandoned.

W. Any Conclusion of Law later determined to be a Finding of Fact is adopted as such.

VIII. ORDER

Based on the foregoing the Board finds the County's adoption of Ordinance No. 01-0128-08 to be in compliance with the GMA.

DATED this 15th day of September 2008.

_____
James McNamara, Board Member

_____
William Roehl, Board Member

_____
Holly Gadbaw, Board Member

Pursuant to RCW 36.70A.300 this is a final order of the Board.

<u>Reconsideration.</u> Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. Petitions for reconsideration shall follow the format set out in WAC 242-02-832. The original and three copies of the petition for reconsideration, together with any argument in support thereof, should be filed by mailing, faxing or delivering the document directly to the Board, with a copy to all other parties of record and their representatives. Filing means actual receipt of the document at the Board office. RCW 34.05.010(6), WAC 242-02-330. The filing of a petition for reconsideration is not a prerequisite for

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

filing a petition for judicial review.

<u>Judicial Review</u>. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil Enforcement. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person, by fax or by mail, but service on the Board means actual receipt of the document at the Board office within thirty days after service of the final order.

<u>Service.</u> This Order was served on you the day it was deposited in the United States mail. RCW 34.05.010(19).

Western Washington
Growth Management Hearings Board
319 7th Avenue SE, Suite 103
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-586-0260
Fax: 360-664-8975

Western Washington
Growth Management Hearings Board
905 24th Way SW, Suite B-2
Olympia, WA 98502
P.O. Box 40953
Olympia, Washington 98504-0953
Phone: 360-664-8966
Fax: 360-664-8975